



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 18, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1938

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Taniua Hardy, Department Representative

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

██████████,

Appellant,

v.

Action Number: 15-BOR-1938

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on July 2, 2015, and reconvened on September 2, 2015, on an appeal filed April 29, 2015.

The matter before the Hearing Officer arises from the April 21, 2015 decision by the Respondent to deny or reduce the Appellant's services through the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Nora Dillard and Taniua Hardy. Appearing as a witness for the Respondent was ██████████. The Appellant was represented by his mother, ██████████. Appearing as witnesses for the Appellant were ██████████, ██████████, ██████████, ██████████ and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of decision, dated April 21, 2015
- D-2 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, §513.9.1.12.1
- D-3 Service Authorization second-level request form, dated March 17, 2015
- D-4 Screen prints from the Respondent's data system detailing the Appellant's itemized budget for the budget year beginning April 7, 2015

Appellant's Exhibits:

- A-1 West Virginia I/DD Waiver Program Request for Nursing Services form, dated February 10, 2015; Supporting documentation
- A-2 Nursing Schedule

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant is a participant in the I/DD Waiver Program.
- 2) The Appellant submitted a second-level negotiation request for services through the I/DD Waiver Program on March 17, 2015 (Exhibit D-3). The services requested included 8,352 units of Skilled Nursing – LPN (1:1) (“LPN”). Other services listed on this request were not the subject of this hearing.
- 3) The Respondent notified the Appellant of its decision to deny the full amount of requested service units, offering reasons for denial as “the amount of service(s) was not determined to be clinically necessary” and “approval would exceed or has exceeded the member’s Individualized Waiver Budget” (Exhibit D-1).
- 4) The Respondent’s notification to the Appellant indicated 3,938 LPN units were approvable (Exhibit D-1).
- 5) The full amount of units requested would result in the Appellant exceeding his assigned budget for the year starting April 7, 2015, and the approvable units represent a maximized amount of LPN units that can be purchased within the confines of the Appellant’s assigned budget (Exhibit D-4).

APPLICABLE POLICY

The policy regarding prior authorization of units of service through the I/DD Waiver Program is located in the Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services. At §513.9.1.12.1, this policy reads, “The amount of service is limited by the member’s individualized budget.”

DISCUSSION

Policy for the I/DD Waiver Program requires services to an approved individual be limited by that individual’s budget. The full amount of services requested by the Appellant would cause

him to exceed his assigned budget, and the amount deemed approvable by the Respondent represents a maximized number of units in that category that would keep the Appellant under budget. Although testimony and evidence demonstrated the Appellant clearly needs nursing services, there is no exception to the policy requirement regarding budget adherence in this matter. The Respondent is correct to deny the Appellant's request for services that would exceed the Appellant's assigned budget.

CONCLUSION OF LAW

Because the Appellant's request for services through the I/DD Waiver Program would cause him to exceed his assigned budget, the Respondent must deny the Appellant's request.

DECISION

It is the decision of the State Hearing Officer to **uphold** Respondent's denial of Appellant's request for second-level services through the I/DD Waiver Program.

ENTERED this ____ Day of September 2015.

Todd Thornton
State Hearing Officer